THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.17954 of 2006

Dated: 08-11-2006

Between:

Jitendra Kumar Agarwal.

..... PETITIONER

AND

The Joint Sub-Registrar, Hyderabad, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.17954 of 2006

ORDER:

The petitioner allegedly purchased house bearing M.No.4-8-68/A/18 admeasuring 180 sq. yards situated at Rang Mahal, Putli Bowli, Hyderabad, under registered sale deed bearing document No.819/2001 dated 07-03-2001 from respondents 2 and 3. He states that respondents 2 and 3 got the said sale deed cancelled by executing cancellation deed bearing document No.96/2006 dated 09-01-2006 and the same was registered by the first respondent without his notice. Therefore, in this writ petition, he seeks a writ of Mandamus declaring the action of the Registering Authority in registering the cancellation deed bearing document No.96/2006 dated 09-01-2006 duly cancelling the registered sale deed bearing document No.819/2001 dated 07-03-2001 as illegal and arbitrary.

A Full Bench of this Court in **Yanala Malleshwari and others v. Smt. Ananthula Sayamma and others**[1], laid down as under.

> The person, who has *ex facie* right whether such right is registered or not can always approach the registering authority, with a request to cancel a sale deed, which was registered earlier by such registering authority by showing that subsequent registration was obtained by fraud by a person who is not entitled to transfer the property or that such transfer was registered by playing fraud on the owner or on the stranger. In the present statutory dispensation, namely Transfer of Property Act, Contract Act, Specific Relief Act and Registration Act, the Court does not see any prohibition operating on the exercise of inherent power by the registering authority to cancel the sale deed earlier registered, which is likely to cause prejudice to the true owner as well as to the entire public at large.

The Full Bench also considered the question whether the writ petition is maintainable for invalidation of cancellation deed or for cancellation of an instrument, which purports to nullify the sale deed registered earlier. Referring to case law, Full Bench observed as under.

> That disputed questions of fact cannot be gone into in a writ petition is axiomatic. A copious reference to case law is not necessary. As pointed out earlier, among many; it is one of the limitations on the exercise of power of judicial review… … … Therefore, this Court is of considered opinion that the parties should be relegated to the civil Court to file suit either under Section 31 or under Section 34 of Specific Relief Act. Point No.2 is answered accordingly.

Following the same, this writ petition is dismissed observing that the petitioner may approach the civil Court and file a suit either under Section 31 or under Section 34 of the Specific Relief Act, 1963. It may

also be noted that as and when the petitioner files the suit, the civil Court has to decide the disputed questions of fact without in any manner being influenced by the decision of the Full Bench in **Yanala Malleshwari** (supra) or this order.

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(**V.V.S.RAO, J**)

08th November, 2006

Note: Issue CC in ten days.

B/o

ghn

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[1] W.P.Nos.9512 of 2003 and batch, dated 24.10.2006